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14 Attorneys for Defendant
15 BLUE SKY NETWORK, LLC

16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

19 ARRIVALSTAR S.A. and MELVINO
20 TECHNOLOGIES LIMITED,

21 Plaintiffs,

22 v.

23 BLUE SKY NETWORK, LLC, a Delaware
24 Limited Liability Company; JET AIRWAYS
25 OF INDIA, INC., a California Corporation;
26 GTX CORP, a Nevada Corporation;
27 INTHINC TECHNOLOGY SOLUTIONS,
28 INC., a Delaware corporation,

Defendants.

Case No. CV 11 4479 SBA

**BLUE SKY NETWORK, LLC'S REPLY
IN SUPPORT OF ITS ADMINISTRATIVE
MOTION TO STAY DISCOVERY
PENDING MEDIATION**

Hearing Date: 2/14/2012
Time: 1:00 p.m.

[CIVIL L.R. 7-11]



1 Defendant Blue Sky Network, LLC (“Blue Sky”) submits the following Reply in support
2 of its Administrative Motion to Stay Discovery Pending Mediation (Dkt. No. 43).

3
4 **I. THE COURT HAS NEVER DENIED BLUE SKY’S REQUEST TO STAY
DISCOVERY.**

5 Plaintiffs ArrivalStar S.A.’s and Melvino Technologies Limited’s (collectively, “Plaintiffs”)
6 opposition (Dkt. No. 44) misstates the facts regarding the parties’ Initial Case Management
7 Conference. During the brief five-minute telephonic conference, the Court indicated that the
8 Conference was being continued and that another Case Management Conference should take place
9 after mediation. Blue Sky noted that it preferred for discovery to be stayed pending mediation. The
10 Court indicated that the parties should *meet and confer* regarding staying discovery, and if no
11 agreement could be reached, then Blue Sky should file the present administrative motion. Contrary
12 to Plaintiffs’ representation, at no time did the Court refuse to stay discovery in response to Blue
13 Sky’s request.¹

14 **II. NO DAMAGES EXIST.**

15 After Plaintiffs filed this action, Blue Sky sought to persuade them to dismiss it without
16 prejudice by explaining that it had not sold the accused SkyRouter 2 product. At Plaintiffs’ request,
17 Blue Sky submitted the written statements of Mr. Gilbert and Mr. Wang attesting to this. (See Dkt.
18 Nos. 43-4, 43-5.) Plaintiffs, however, fail to mention these discussions in their opposition, instead
19 citing a now-removed (and incorrect) statement on Blue Sky’s website that SkyRouter 2 is “now
20 available.”

21 Regardless, Plaintiffs’ position that it is entitled to damages in the form of a reasonable
22 royalty is nonsensical. It defies simple math: ***zero sales multiplied by any reasonable royalty rate***
23 ***is zero***. Plaintiffs’ unreasonable logic is exactly why mediation is the most appropriate means to
24 minimize any further waste of judicial resources and unnecessary costs to Blue Sky, and why
25 Plaintiffs’ tactics of using the litigation process to pressure Blue Sky to pay Plaintiffs to avoid
26 defense costs should not be condoned.

27 ¹ Notably, Plaintiffs’ opposition does not address service of its premature infringement
28 contentions. (See Dkt. No. 44.) This is yet another tactic by Plaintiffs to avoid negotiating the
stay of discovery and increase costs incurred by Blue Sky before the imminent mediation.



1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should exercise its discretion and grant Blue Sky's
3 administrative motion to stay discovery and the parties' obligations under the Patent Local Rules
4 pending the conclusion of the imminent mediation.

5 DATED: January 30, 2012

Respectfully submitted,

6 KILPATRICK TOWNSEND & STOCKTON LLP

7
8 By: /s/ G. Ross Allen
G. Ross Allen

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10 Attorney for Defendant,
BLUE SKY NETWORK, LLC

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 30th day of January, 2012, with a copy of this document via the Court's CM/ECF system per Civil L.R. 5-4. Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ G. Ross Allen

G. Ross Allen

